

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District
Name <u>Douglas Obuizen</u>	Prisoner No. <u>200</u>	
Place of Confinement <u>Arenal State Prison</u>	<p><b>FILED</b> <b>FILED</b></p> <p>CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA BY <u>SEP 6 2007</u> CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA BY <u>[Signature]</u> DEPUTY CLERK</p>	
Name of Petitioner (include name under which convicted)		Name of Respondent (authorized person having custody of petitioner)
		V.
The Attorney General of the State of:		<u>1:07-CV-1309-AWZ-DLB-HC</u>

**PETITION**

- Name and location of court which entered the judgment of conviction under attack Santa Clara County Court House.
- Date of judgment of conviction May, 2002 (Received 1 year in county and 1 year probation. After a first time technical violation, I was sentenced on Sept 10, 2003 to 6 years in prison.)
- Length of sentence 6 years in prison.
- Nature of offense involved (all counts) I was convicted of a single '288' (lewd act on a student under 14). The act involved a 'hug' only (no touching or groping etc.). The school defended me by stating there was no molestation as sexual overtures made toward the female student.
- What was your plea? (Check one)
 

(a) Not guilty	<input checked="" type="checkbox"/>
(b) Guilty	<input type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury	<input checked="" type="checkbox"/>
(b) Judge only	<input type="checkbox"/>
- Did you testify at the trial?  
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

Also, I received a misdemeanor 'false imprisonment' -  
reduced from an alleged felony false imprisonment, by the  
the jury since the act involved a 5 second hug, only.  
I was also told, and alleged, by the detective that  
I had a collection of pornography, but that was all very  
soft-core porn. However, there were about 4 pictures  
- taken off the internet - that were speculative as to  
being child pornography.

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## 9. If you did appeal, answer the following:

- (a) Name of court 6th District Court of Appeals
- (b) Result was finally denied by the Calif. State Supreme Ct.
- (c) Date of result and citation, if known Also, the length of my sentence was also appealed, but that was denied too.
- (d) Grounds raised First time technical violation to accidentally
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:  
took the next Expressway Exit but turned around and  
 (1) Name of court On the original conviction, I contended that a 'hug' is not  
an indecent act, as would be viewed by an average  
 (2) Result normal human being.
- Note: I did not have the money to take the  
 (3) Date of result and citation, if known appeal to the Federal level.
- (4) Grounds raised \_\_\_\_\_

## (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

## 10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

## 11. If your answer to 10 was "yes," give the following

information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

and went back to the highway. However, the detective alleged, because I had trespassed into the quite restricted area from the school - as indicated by a GPS tracking device - I was in violation. My retort was, that it was accidental, and I did - while still on the Expressway - turned around at the stop light and proceeded back to the highway. I then went to the prior turn-off (which it was my intention to take). Also, I contended, that this took place on a weekend - while school was out - and also a holiday. The approx. violation date was March or April of 2003. I was not arrested until 12 days later, when I arranged to meet with the detective of the Palo Alto Police Dept.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

*Did not have funds to take it to Federal level.*

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

**CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- ☒ (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The prosecutor used a 'preemptory challenge' to have the court venue changed to a judge (Judge

Supporting FACTS (state briefly without citing cases or law) Worthman), who he was favorable to obtaining a conviction. This occurred after the prior judge reduced my bail from \$200,000 to \$40,000, since I had no prior convictions or had ever been to jail before. Upon arrival at the new 'court venue', the prosecutor - Gillingham - asked that the bail be raised to \$200,000. It was granted and my Dad had to pay an additional \$13,000 to the \$4,000 he had paid prior.

B. Ground two:

Supporting FACTS (state briefly without citing cases or law): Ground 2. A complaint was never made by either the student (alleged victim), or her parents, or any other relative, friend or teacher. A new principal (during summer), who did not know me, reported a 'strange man' was seen on the school grounds. An arrest and investigation suggested that because I was giving favorable attention to a student - who was not

doing well in school, that<sup>(5)</sup> they claimed my real attempt was with a lewd approach. However, I was convicted only of a simple 288 felony (a hug), and ultimately given a six year sentence.



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C. Ground three:

That 'the hug' ~~was~~ occurred in a school hall well seen by teachers and students.

Supporting FACTS (state briefly without citing cases or law):

The 'hug' was also witnessed by Marcie Arreano - the educational testing teacher.

D. Ground four:

That my conduct toward students over the entire year that I worked with the Palo Alto School District was nothing

Supporting FACTS (state briefly without citing cases or law):

less than exemplary, and was in fact, encouraged by the ~~past~~ <sup>less than exemplary</sup> Superintendent to be expecting my return in the Fall.

Also, the student, one of 18 learning disabled students I worked with, was examined by a psychological <sup>aminer</sup> examiner, who reported that ~~the~~ <sup>the</sup> (student), made her ~~best~~ <sup>best</sup> academic and behavioral

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: →

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

A.J. Kapp (Santa Clara County)

and

(b) At arraignment and plea

A.J. Kapp (Santa Clara County)

turn-around during the year I worked with her.



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(c) At trial \_\_\_\_\_

(d) At sentencing \_\_\_\_\_

(e) On appeal Brownell (I believe San Jose).

(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☐One felony and 5 misdemeanors approx.

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: Spent 9 months in county(Elmerood, Milpitas, 6 months San Quentin begin Sept 18, 03.Then 2 years at Lancaster, and now 9 months at Arbol. My release date is Aug.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒I may seek an expungement and also an ex-  
pendent to register.

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed

\_\_\_\_\_  
(date)Douglas D. Grijia  
Signature of Petitioner

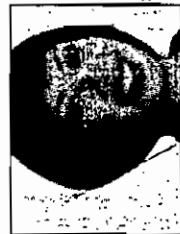
EXHIBIT I

San Jose Mercury News Story

Date: Aug. 30, 2002

# The Peninsula & San Francisco

www.bayarea.com/news



l.a. chung

## Surfing's Duke gets his due on new stamp

It's a long way from here to Waikiki Beach, but for 65-year-old Johnny Rice, who grew up surfing out on the west side of Santa Cruz, Duke Paoa Kahana-moku is ever-present. On Cowells Beach, in the surf break, in the spirit of true water men and women every-where.

Now, this longtime surfer thinks it's good that the broader public will know of Kahana-moku. Soon.

"It's about time they put a Hawaiian person on a stamp," said Rice, who was

a Waikiki beach

boy from 1958 to

1961 and became a

master surfboard

shaper and de-

signer. "There's a

lot of things Ha-

waiian people

have done that

they don't get

credit for."

For only the



# Ex-teacher's aide gets year in jail

HUGGING AND GIFTS, BUT NO OVERT ACT, JUDGE EXPLAINS

**Santa Clara County Superior Court Judge Diane Northway** said the former Walter Hays school tutor was obsessional and did not seem to grasp that he had done anything wrong.

By Sean Webby

Mercury News

A former Palo Alto teacher's aide who showered a fourth-grade girl with Valentine's Day cards and dresses and once hugged and kissed her on the head in a private classroom was sentenced Thurs-day to a year in county jail.

Douglas Obujen, who turned 56 the day he was sentenced, had faced eight years in state prison.

Santa Clara County Superior Court Judge Diane Northway ex-

plained her sentence by saying that Obujen's crimes did not in-volve an overt and serious sexual act. But she said she shared prose-cutor Chuck Gillingham's stated concern in court that Obujen was obsessional and did not seem to grasp that he had done anything wrong.

"I don't know what reality Mr. Obujen is operating in, but it's not the same one I operate in or the rest of us operate in," Northway said. She urged him to work hard

with counselors to deal with his problematic behavior.

Obujen, wearing the brown-and-green uniform that Santa Clara County Jail uses for those in pro- tective custody, said nothing at the sentencing. Neither the young girl, who testified at his trial, nor her parents were there.

Since there was no rape or overt sexual molestation, the unusual case hinged on Obujen's mental state during the time he followed her around school and hugged her in a private teaching room. Obujen was found guilty of a series of lewd acts on a child under the age of 14,

See SENTENCE, Page 8B

RESIDENCY  
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FOR RAVENS

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forms.

EXHIBIT II

School Attorney's Defend Obujen

Date: Aug. 12, 2004

1 LOUIS A. LEONE, ESQ., State Bar No. 099874

2 **STUBBS & LEONE**

3 2175 N. California Blvd., Suite 900

4 Walnut Creek, CA 94596-5313

5 Telephone: (925) 974-8600

6 Facsimile: (925) 974-8601

7 Attorneys for Defendant

8 **PALO ALTO UNIFIED SCHOOL DISTRICT**

9  
10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
11 **COUNTY OF SANTA CLARA**  
12 **UNLIMITED JURISDICTION**

13 JANE DOE, a minor, by JOHN DOE, her  
14 Guardian ad Litem,

15 Plaintiff,

16 vs.

17 DOUG OBUJEN, PALO ALTO UNIFIED  
18 SCHOOL DISTRICT, and ROES 1 to  
19 100, inclusive,

20 Defendants.

**CASE NO. CV 813846**

**DEFENDANT PALO ALTO UNIFIED  
SCHOOL DISTRICT'S MEDIATION  
BRIEF**

**Date: August 12, 2004**  
**Time: 1:00 p.m.**  
**Mediator: Hon. Ellen James**  
**JAMS**  
**100 Pringle Avenue**  
**Walnut Creek, CA 94596**

21 **FACTUAL BACKGROUND**

22 This cause of action for emotional injuries is premised upon the minor-plaintiff's  
23 allegations that a former employee of PALO ALTO UNIFIED SCHOOL DISTRICT,  
24 defendant DOUG OBUJEN, a resource teacher's aide (a non-certificated position) at  
25 her elementary school, inappropriately kissed her on top of the head, hugged her, gave  
26 her presents and followed her both on and off campus during the 2000-2001 school  
27 year. Plaintiff alleges this conduct constituted assault, battery, harassment, stalking  
28



1 and false imprisonment. As a result of OBUJEN's conduct<sup>1</sup>, plaintiff allegedly suffered  
2 severe emotional distress and required psychiatric care. Plaintiff's theory of liability  
3 against the DISTRICT is respondeat superior and negligent supervision.  
4

5 By plaintiff's own admissions, OBUJEN's attentions toward her were always  
6 done outside the presence of school officials. In December of 2000, after plaintiff's  
7 mother advised the school principal that OBUJEN had appeared unannounced at the  
8 family home bearing gifts consisting of two dresses for the plaintiff, he was reprimanded  
9 for not respecting student boundaries. OBUJEN's explanation, however, was  
10 that he wanted to do something nice for the plaintiff, a special ed student, who had  
11 done well that semester. Although plaintiff's own mother did not believe her daughter  
12 was in any danger and only advised school officials that she thought the gifts were  
13 overly extravagant, OBUJEN was re-assigned and no longer assisted plaintiff in one-  
14 on-one tutoring.  
15  
16

17 Five months later, the DISTRICT learned from plaintiff's mother that OBUJEN  
18 had appeared at an off-campus children's library and played a board game with  
19 plaintiff and her friends. DISTRICT personnel again reprimanded OBUJEN and  
20 advised him that it was inappropriate to socialize with students off campus without  
21 parental permission.  
22

23 OBUJEN's contract with at the school site ended at the conclusion of the school  
24 year. Thereafter, he attempted to make contact with the plaintiff at her summer school  
25 site. The DISTRICT then learned that OBUJEN had surreptitiously given plaintiff gifts  
26  
27

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28 <sup>1</sup>OBUJEN did not sexually molest the plaintiff, nor make any sexual overtures to her.



1           **C.    Negligence of Others.**

2           At no time prior to OBUJEN's arrest and conviction did plaintiff or her mother  
3 advise anyone at the DISTRICT that OBUJEN was a danger to plaintiff or constituted a  
4 threat to the plaintiff. Plaintiff has admitted that she found OBUJEN annoying but  
5 never told anyone, including teachers she liked and with whom she felt comfortable,  
6 that she was scared of OBUJEN or that he made her feel uncomfortable. Nor did she  
7 relay any such feelings to her friends, her siblings, or her parents. Plaintiff's own  
8 mother admitted to the police that she had not thought OBUJEN was dangerous.  
9  
10

11                           **DAMAGES**

12           **Emotional Injuries**

13           Plaintiff was not seen by any counselor or therapist until after she testified at the  
14 criminal trial of OBUJEN in May of 2002, or more than one year post-incident. Accord-  
15 ing to plaintiff, she was made to go to counseling at the insistence of her parents.  
16 Prior to counseling, plaintiff contends that she had simply forgotten about OBUJEN.  
17 She was seen five times by Carol Walsh, Ph.D. Billing totals \$890.00.  
18  
19

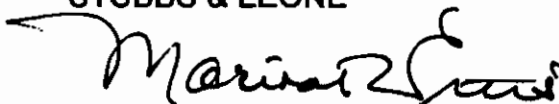
20           Plaintiff's school performance has improved, in that she is no longer receiving  
21 one-on-one tutoring, and her academic performance is average to above-average in all  
22 subject matters. Although it has been represented that plaintiff missed school due to  
23 "fear" of the school environment, records do not corroborate such a representation in  
24 that plaintiff missed one day the semester following the conclusion of OBUJEN's  
25 criminal trial, conviction and sentencing.  
26  
27  
28

**Settlement Negotiations**

The parties have not engaged in any settlement discussions or negotiations, to date. Defendant has requested a settlement proposal from the plaintiff's attorney, and one has yet to be provided.

Dated: August 4, 2004

STUBBS & LEONE



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MARINA B. PITTS, ESQ.

Attorneys for Defendant

PALO ALTO UNIFIED SCHOOL DISTRICT

EXHIBIT III

Psychological Examiner notes  
Academic Success in all areas of study  
throughout Jane Doe's 4th grade year

Date: 3-08, 3-22

**CONFIDENTIAL REPORT**

Palo Alto Unified School District  
 Department of Student Services  
 25 Churchill Avenue  
 Palo Alto, CA 94306

**PSYCHOEDUCATIONAL EVALUATION**

<b>Name:</b> Kirsten Atkinson	<b>School:</b> Jordan Middle School
<b>Grade:</b> 7	<b>Teacher:</b> Joleen Roach
<b>Evaluation Date(s):</b> 03/08, 03/22/04	<b>Initial Triennial Other</b> _____
<b>Birth Date:</b> 09/27/91	<b>Examiner:</b> Wesley Cedros, Ed.S.
<b>Chronological Age:</b> 12-5	School Psychologist

**REASON FOR REFERRAL**

This evaluation was completed as part of Kirsten's three-year Special Education reappraisal process. This report is only one component of the triennial reappraisal process and will be considered in conjunction with other data from parents, teachers, administrators and other specialists to determine whether Kirsten remains eligible for special education services.

**ASSESSMENT TECHNIQUES:**

Wechsler Intelligence Scales for Children, 4<sup>th</sup> Edition (WISC-IV)  
 Test of Auditory-Perceptual Skills – Upper Level (TAPS-UL)  
 Test of Visual-Perceptual Skills – Upper Level (TVPS-UL)  
 Parent Health & Development Survey  
 Teacher Interview  
 Student Interview  
 Observation  
 Review of Records

**BACKGROUND INFORMATION****Review of Records**

Kirsten is currently in the 7<sup>th</sup> grade class at Jordan Middle School. Kirsten's cumulative school folder revealed that she has been enrolled in Palo Alto Unified School District since 08/96. She has never been retained. Records also indicate that Kirsten has no history of significant attendance or discipline problems that would have a negative effect on her academic performance.

Kirsten was initially made eligible for Special Education services as a student with a Specific Learning Disability in the 1<sup>st</sup> grade at Walter Hays. At that time, reading comprehension was a major concern. Psycho-educational testing found overall cognitive functioning in the High Average range with higher nonverbal problem solving skills relative to her ability to solve problems with the use of words. Processing deficits were identified in the areas of auditory processing and attention. Kirsten's triennial evaluation in 4<sup>th</sup> grade showed significant improvement in all academic areas. Cognitive ability was again judged to be in the High Average range, however, no significant processing deficits were found and there was no longer a significant discrepancy between her cognitive ability and any area of academic achievement. Despite these findings, the IEP Team again found her eligible for Special Education services as a student with a Specific Learning Disability. Currently, Kirsten receives no direct RSP support, but manages to maintain Average to Above Average grades in all classes.

**CULTURAL, ENVIRONMENTAL AND ECONOMIC ISSUES IMPACTING SCHOOL PERFORMANCE**

Kirsten's primary language is English, which is also the language spoken by the adults in the home. Her parents are employed and there are no significant economic issues affecting the family at this time. There

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